

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 416

Representatives Howse, Brent

A BILL

To enact sections 4145.01, 4145.02, 4145.04, 1
4145.06, 4145.07, 4145.08, 4145.10, 4145.13, 2
4145.14, 4145.16, 4145.17, and 4145.99 of the 3
Revised Code to establish an auto-enrollment 4
retirement savings program for private sector 5
employees. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4145.01, 4145.02, 4145.04, 7
4145.06, 4145.07, 4145.08, 4145.10, 4145.13, 4145.14, 4145.16, 8
4145.17, and 4145.99 of the Revised Code be enacted to read as 9
follows: 10

Sec. 4145.01. As used in this chapter: 11

(A) "Compensation" means all salary, wages, and other 12
earnings of an employee participating in the Ohio retirement 13
savings program but does not include reimbursement of expenses 14
paid by the employee or benefits such as paid leave, insurance 15
coverage, or employer contributions to a retirement program. 16

(B) "Eligible employee" means a person employed by an 17
eligible employer, except that "eligible employee" does not 18
include either of the following: 19

<u>(1) Employees covered under the federal "Railway Labor Act," 45 U.S.C. 151 et seq.;</u>	20
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<u>(2) Employees covered by valid collective bargaining agreements that expressly provide for a multi-employer Taft-Hartley pension plan.</u>	22
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<u>(C) (1) "Eligible employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in this state, whether or not for profit.</u>	25
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<u>(2) "Eligible employer" does not include any of the following:</u>	28
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<u>(a) The federal government;</u>	30
<u>(b) The state or any agency or instrumentality of the state;</u>	31
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<u>(c) A county, township, municipal corporation, or any other political subdivision of the state, or any agency or instrumentality of any county, township, municipal corporation, or other political subdivision of the state.</u>	33
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<u>(D) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 26 U.S.C. 1.</u>	37
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<u>(E) "Participating employer" means an eligible employer that participates in the Ohio retirement savings program.</u>	39
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<u>(F) "Automatic contribution arrangement" means an arrangement by which an employer allows employees to have payroll deduction contributions remitted to a retirement savings program.</u>	41
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<u>Sec. 4145.02. (A) The Ohio retirement savings program is established.</u>	45
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Eligible employees who participate in the program shall be 47
enrolled in a defined benefit retirement plan developed under 48
section 4145.08 of the Revised Code. 49

(B) The program shall be administered by the public 50
employees retirement board, except that for all purposes related 51
to the program and its administration that board shall consist 52
of the following members: 53

(1) The treasurer of state's investment designee on the 54
public employees retirement board; 55

(2) The director of administrative services; 56

(3) The two investment expert members on the public 57
employees retirement board; 58

(4) One member appointed by the speaker of the house of 59
representatives to represent eligible employees; 60

(5) One member appointed by the president of the senate to 61
represent participating employers; 62

(6) One member appointed jointly by the speaker of the 63
house of representatives and president of the senate to 64
represent the public. 65

(C) Terms of office of members appointed under divisions 66
(B) (4) to (6) of this section shall be four years. Each such 67
member shall hold office until the later of the end of the term 68
for which the member is appointed or the date the member's 69
successor takes office. Members appointed under divisions (B) (4) 70
to (6) of this section serve without compensation but shall be 71
reimbursed for actual and necessary expenses in the same manner 72
as other members of the public employees retirement board. These 73
board members are subject to the same requirements and 74

restrictions as other members of the public employees retirement 75
board. 76

Sec. 4145.04. There is created a retirement savings trust 77
known as the Ohio retirement savings fund, which is in the 78
custody of the treasurer of state but not part of the state 79
treasury. After sufficient funds become available for the Ohio 80
retirement savings program to be operative pursuant to this 81
chapter, the fund, as a self-sustaining trust, shall pay all 82
costs of administration only out of moneys on deposit therein. 83

The public employees retirement board shall segregate 84
moneys received by the fund into a program account and an 85
administrative account. Moneys in the program account may be 86
invested or reinvested by the treasurer of state or invested in 87
whole or in part by the board, a private money manager, or both, 88
as determined by the board. Investments shall be made in 89
accordance with the investment policy adopted by the board. 90

Except during a transition period specified by the board 91
or as otherwise provided in this chapter, the board shall pay 92
all costs of administration of the fund from the administrative 93
account. Operating costs associated with administering the fund 94
do not include the procurement of private underwriting for the 95
return of the retirement savings. 96

Contributions paid by employees and employers into the 97
fund shall be used exclusively for the purpose of paying 98
benefits to the participants in the Ohio retirement savings 99
program, the cost of administration of the program, and 100
investments made for the benefit of the program. 101

Sec. 4145.06. (A) An eligible employer that does not 102
maintain an employer-sponsored retirement program that is tax 103

exempt under the Internal Revenue Code shall provide its 104
eligible employees an automatic contribution arrangement to 105
allow employee participation in the Ohio retirement savings 106
program. 107

(B) Under the Ohio retirement savings program, an eligible 108
employer shall enroll each eligible employee in the automatic 109
contribution arrangement established by the employer. Unless the 110
employee elects not to participate, the employer shall deduct 111
from each paycheck payable to the employee a percentage of the 112
employee's compensation specified by the public employees 113
retirement board under section 4145.08 of the Revised Code. 114
Amounts contributed to the program through these withholdings 115
are in addition to the tax on wages imposed by the "Federal 116
Insurance Contributions Act," 26 U.S.C. 3101. The employer shall 117
promptly transmit all amounts deducted to the Ohio retirement 118
savings fund. 119

An employee who is participating may at any time elect to 120
cease participation but no refund of previous contributions 121
shall be made, except as required by federal law. An election 122
not to participate or to cease participation shall be made by 123
completing and filing with the employer the form provided under 124
section 4145.07 of the Revised Code. The employer shall provide 125
additional copies of the form at an employee's request. 126

An employee who elected not to participate may change the 127
election and become a participant at any time. An election to 128
participate after having elected not to participate shall be 129
made by giving notice to the employer. 130

(C) No eligible employer that is subject to division (A) 131
of this section shall fail to comply with that division or 132
division (B) of this section. 133

Sec. 4145.07. Before opening the Ohio retirement savings 134
program for enrollment, the public employees retirement board 135
shall design and disseminate to employers through the department 136
of job and family services an employee information packet. The 137
board shall include in the packet background information on the 138
program and appropriate disclosures for employees. 139

The board also shall include in the employee information 140
packet the opt-out form for an eligible employee to elect not to 141
participate in the program. The board shall draft the form 142
simply and concisely and in a manner that the board considers 143
necessary to appropriately evidence the employee's understanding 144
that the employee is choosing not to have earnings deducted to 145
save for retirement through the program. 146

An employer shall provide the employee information packet 147
to each eligible employee at the time the program commences for 148
that employer and to each new employee at the time of hiring. An 149
employee shall acknowledge having received the packet by signing 150
as specified in the packet. 151

Sec. 4145.08. (A) The public employees retirement board 152
shall develop a defined benefit retirement program for the Ohio 153
retirement savings program that qualifies for tax exempt status 154
under the Internal Revenue Code. The board shall establish 155
schedules of retirement eligibility and benefit amounts. 156

The board shall specify by rule adopted under Chapter 119. 157
of the Revised Code the percentage of compensation to be 158
deducted from employees' compensation and transmitted to the 159
Ohio retirement savings fund. The percentage shall be not less 160
than three per cent of compensation and not more than five per 161
cent. The board shall periodically review the percentage and may 162
revise it by rule adopted under Chapter 119. of the Revised 163

<u>Code.</u>	164
<u>(B) The board, in the capacity as trustee of the Ohio retirement savings fund, shall do all of the following:</u>	165
<u>(1) Make and enter into contracts necessary for the administration of the fund;</u>	166
<u>(2) Cause moneys in the fund to be held, invested, and reinvested;</u>	167
<u>(3) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government, or any other person or entity for deposit to the administrative account or the program account within the fund;</u>	168
<u>(4) Appoint a program administrator and determine the duties of the program administrator;</u>	169
<u>(5) Employ other staff as necessary and set their salaries;</u>	170
<u>(6) Provide for the payment of costs of administration and operation of the fund;</u>	171
<u>(7) Retain or contract with private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, or other professionals as necessary;</u>	172
<u>(8) Procure insurance against any loss in connection with the property, assets, or activities of the fund, and secure private underwriting and reinsurance to manage risk and insure the retirement savings rate of return;</u>	173
<u>(9) Procure insurance indemnifying each member of the</u>	174
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board from personal loss or liability resulting from a member's 191
action or inaction as a member of the board; 192

(10) Collaborate and cooperate with private financial 193
institutions, service providers, and business, financial, trade, 194
membership, and other organizations to the extent necessary or 195
desirable for the effective and efficient design, 196
implementation, and administration of the Ohio retirement 197
savings program and to maximize outreach to eligible employers 198
and eligible employees; 199

(11) Facilitate compliance by the program or arrangements 200
established under the program with all applicable requirements 201
for the program under the Internal Revenue Code, including tax 202
qualification requirements or any other applicable law and 203
accounting requirements; 204

(12) Carry out the duties and obligations of the fund 205
pursuant to this chapter and exercise any and all other powers 206
as may be reasonably necessary to implement this chapter. 207

(C) The board shall adopt rules in accordance with Chapter 208
119. of the Revised Code as it considers necessary to implement 209
this chapter consistent with the Internal Revenue Code and 210
regulations issued pursuant to that code to ensure that the 211
program meets all criteria for federal tax-deferral or tax 212
exempt benefits, or both. 213

Sec. 4145.10. (A) In addition to the duties imposed by 214
section 4145.08 of the Revised Code, the public employees 215
retirement board shall do all of the following in its 216
administration of the Ohio retirement savings program: 217

(1) Cause the program or arrangements established under it 218
to be designed, established, and operated, in a manner 219

<u>consistent with all of the following:</u>	220
<u>(a) In accordance with best practices for retirement savings vehicles;</u>	221 222
<u>(b) To maximize participation, saving, and sound investment practices, and appropriate selection of default investments;</u>	223 224 225
<u>(c) With simplicity, ease of administration for participating employers, and portability of benefits.</u>	226 227
<u>(2) Submit progress and status reports to participating employers, eligible employees, and the general assembly;</u>	228 229
<u>(3) Design and establish the process for the enrollment of program participants.</u>	230 231
<u>(B) The board may arrange for collective, common, and pooled investment of assets of the fund with a view to saving costs through efficiencies and economies of scale.</u>	232 233 234
<u>Sec. 4145.13. No member of the Ohio public employees retirement board or program administrator or other staff employed by the board shall do any of the following:</u>	235 236 237
<u>(A) Directly or indirectly have any interest in the making of any investment for the Ohio retirement savings program or in the gains or profits accruing from any investment made for the program;</u>	238 239 240 241
<u>(B) Borrow any funds or deposits of the Ohio retirement savings fund or use those funds or deposits in any manner, for the person's self or as an agent or partner of others;</u>	242 243 244
<u>(C) Become an endorser, surety, or obligor on investments by the board.</u>	245 246

Sec. 4145.14. (A) The members of the Ohio public employees retirement board and the program administrator and staff employed by the board shall discharge their duties with respect to the Ohio retirement savings fund solely in the interest of the participants in the Ohio retirement savings program as follows:

(1) For the exclusive purposes of providing benefits to program participants and defraying reasonable expenses of administering the program;

(2) By investing with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(B) The board shall prepare and adopt a written investment policy for the assets of the fund that includes a risk management and oversight program.

The board shall consider the investment policy and any changes to the investment policy at a public hearing.

To the extent possible and prudent, the board shall invest assets of the fund in low fee index funds or create an investment portfolio that mirrors such funds.

(C) The primary objective of the investment policy adopted by the board shall be to preserve the safety of principal of the fund and provide a stable and low-risk rate of return. The board shall design the investment policy to mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio.

Sec. 4145.16. No employer shall incur any liability for an 276
employee's decision to participate in or not participate in the 277
Ohio retirement savings program. 278

An employer shall not be a fiduciary, or considered to be 279
a fiduciary, over the Ohio retirement savings fund or the 280
program. An employer shall not bear responsibility for the 281
administration, investment, or investment performance of the 282
program. An employer shall not be liable with regard to 283
investment returns, program design, and benefits paid to program 284
participants. 285

Sec. 4145.17. The state shall not incur any liability for 286
the payment of the retirement savings benefit earned by Ohio 287
retirement savings program participants pursuant to this 288
chapter. The state, and any of the funds of the state, shall 289
have no obligation for payment of the benefits arising from this 290
chapter. 291

Sec. 4145.99. Beginning six months after the date on which 292
the public employees retirement board determines that the Ohio 293
retirement savings program established under this chapter is 294
operational, an employer that violates division (C) of section 295
4145.06 of the Revised Code shall be fined by the board in the 296
amount of one hundred dollars per eligible employee for whom the 297
employer fails to provide an arrangement described in division 298
(A) of that section. 299

The board shall deposit all moneys received under this 300
section into the program account in the Ohio retirement savings 301
fund. 302